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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22, 25, and 52

**[FAC 2005-56; FAR Case 2011-030; Item VI; Docket 2011-0030,
Sequence 1]**

RIN 9000-AM16

**Federal Acquisition Regulation; New Designated Country
(Armenia) and Other Trade Agreements Updates**

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to add Armenia as a designated country, due to the accession of Armenia to membership in the World Trade Organization Government Procurement Agreement. The rule also updates the FAR lists of countries that are party to the Agreement on Trade in Civil Aircraft.

DATES: Effective Date: **[INSERT DATE OF PUBLICATION IN THE
FEDERAL REGISTER.]**

FOR FURTHER INFORMATION CONTACT: Ms. Cecelia L. Davis,
Procurement Analyst, at 202-219-0202 for clarification of
content. For information pertaining to status or

publication schedules, contact the Regulatory Secretariat at 202-501-4755. Please cite FAC 2005-56, FAR Case 2011-030.

SUPPLEMENTARY INFORMATION:

I. Background

On September 15, 2011, Armenia became a party to the World Trade Organization Government Procurement Agreement (WTO GPA). The Trade Agreements Act (19 U.S.C. 2501 et seq.) provides the authority for the President to waive the Buy American Act and other discriminatory provisions for eligible products from countries that have signed an international trade agreement with the United States (such as the WTO GPA). The President has delegated this waiver authority to the U.S. Trade Representative (see FAR 25.402).

On September 22, 2011, because Armenia became a party to the WTO GPA and because the U.S. Trade Representative has determined that Armenia will provide appropriate reciprocal competitive Government procurement opportunities to United States products and services and suppliers of such products and services, the U.S. Trade Representative published a notice in the Federal Register (76 FR 58856) waiving the Buy American Act and other discriminatory provisions for eligible products from Armenia.

In addition, the Office of the U.S. Trade Representative has provided an updated list of countries that are party to the Agreement on Trade in Civil Aircraft.

The U.S. Trade Representative has waived the Buy American Act for civil aircraft and related articles from countries that are parties to the Agreement on Trade on Civil Aircraft.

II. Discussion and analysis

FAR 25.003 defines WTO GPA countries by listing the parties to the WTO GPA, and defines "designated country" as a WTO GPA country, a Free Trade Agreement country, a least designated country, or a Caribbean Basin country (including the lists of countries in each category).

Because Armenia is now a WTO GPA country and therefore also a designated country, as determined by the U.S. Trade Representative, this final rule adds Armenia to the lists of WTO GPA countries and designated countries at FAR 22.1503, 25.003, 52.222-19, 52.225-5, 52.225-11, and 52.225-23.

This final rule also updates the FAR lists of countries that are party to the Agreement on Trade in Civil Aircraft at FAR 25.407 and 52.225-7, Waiver of Buy American Act for Civil Aircraft and Related Articles.

Conforming changes have also been made to the associated clause dates for the revised clauses in the lists at FAR 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, and FAR 52.213-4, Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

III. Publication of this final rule for public comment is not required by statute

"Publication of proposed regulations", 41 U.S.C. 1707, is the statute which applies to the publication of the Federal Acquisition Regulation. Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because it recognizes actions taken by the United States Trade Representative that do not have a significant effect on contractors or offerors.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of

promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant FAR revision within the meaning of FAR 1.501-1 and 41 U.S.C. 1707 and does not require publication for public comment.

VI. Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) unless the collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. The Paperwork Reduction Act does apply, because the final rule affects the certification and information collection requirement in the provision at FAR 52.225-11, Buy American Act—Construction Materials Under Trade Agreements, currently approved under OMB clearance 9000-0141, Buy American Act—Construction. The FAR Council has determined that the

impact on the approved paperwork burden is negligible.

Comments regarding the burden estimates or any other aspect of this collection of information, including suggestions for reducing the burden, in response to approved OMB clearance 9000-0141, should be sent, not later than **[insert date 60 days after publication in the FEDERAL REGISTER]** to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, Regulatory Secretariat Division (MVCB), ATTN: Hada Flowers, 1275 First Street, NE, 7th Floor, Washington, DC 20417.

Requesters may obtain a copy of the supporting statement for the burden approved under OMB clearance 9000-0141 from the General Services Administration, Regulatory Secretariat (MVCB), Attn: Hada Flowers, 1275 First Street, NE, 7th Floor, Washington, DC 20417. Please cite OMB Control Number 9000-0141, Buy American Act–Construction, in all correspondence.

List of Subjects in 48 CFR Parts 22, 25, and 52

Government procurement.

Dated: February 21, 2012.

Laura Auletta,
Director,
Office of Governmentwide
Acquisition Policy,
Office of Acquisition Policy,
Office of Governmentwide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 22, 25, and 52 as set forth below:

1. The authority citation for 48 CFR parts 22, 25, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.1503 [Amended]

2. Amend section 22.1503 by removing from paragraph (b)(4) the word "Aruba," and adding the words "Armenia, Aruba," in its place.

PART 25—FOREIGN ACQUISITION

25.003 [Amended]

3. Amend section 25.003 by removing from paragraph (1) of the definition "Designated country", and the definition "World Trade Organization Government Procurement Agreement (WTO GPA) country" the word "Aruba," and adding the words "Armenia, Aruba," in their place.

4. Revise section 25.407 to read as follows:

25.407 Agreement on Trade in Civil Aircraft.

Under the authority of Section 303 of the Trade Agreements Act, the U.S. Trade Representative has waived the Buy American Act for civil aircraft and related articles that meet the substantial transformation test of the Trade

Agreements Act, from countries that are parties to the Agreement on Trade in Civil Aircraft. Those countries are Albania, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Egypt, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Macao China, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, Taiwan (Chinese Taipei), and the United Kingdom.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Amend section 52.212-5 by revising the date of the clause, and paragraphs (b) (27) and (b) (41) to read as follows:

52.212-5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

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CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR
EXECUTIVE ORDERS—COMMERCIAL ITEMS ([**INSERT ABBREVIATED MONTH AND YEAR
OF PUBLICATION IN THE FEDERAL REGISTER**])

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(b) * * *

___ (27) 52.222-19, Child Labor—Cooperation with
Authorities and Remedies ([**Insert Abbreviated Month and Year
of Publication in the Federal Register**]) (E.O. 13126).

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___ (41) 52.225-5, Trade Agreements ([**Insert
Abbreviated Month and Year of Publication in the Federal
Register**]) (19 U.S.C. 2501, et seq., 19 U.S.C. 3301 note).

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6. Amend section 52.213-4 by revising the date of the clause and paragraph (b) (1) (i) to read as follows:

**52.213-4 Terms and Conditions—Simplified Acquisitions
(Other Than Commercial Items).**

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TERMS AND CONDITIONS—SIMPLIFIED ACQUISITIONS (OTHER THAN COMMERCIAL
ITEMS) ([INSERT ABBREVIATED MONTH AND YEAR OF PUBLICATION IN THE
FEDERAL REGISTER])

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(b) * * *

(1) * * *

(i) 52.222-19, Child Labor—Cooperation with
Authorities and Remedies ([Insert Abbreviated Month and Year
of Publication in the Federal Register]) (E.O. 13126).
(Applies to contracts for supplies exceeding the micro-
purchase threshold.)

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7. Amend section 52.222-19 by revising the date of the clause to read as set forth below; and removing from paragraph (a) (4) the word "Aruba," and adding the words "Armenia, Aruba," in its place.

52.222-19 Child Labor—Cooperation with Authorities and Remedies.

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CHILD LABOR—COOPERATION WITH AUTHORITIES AND REMEDIES
(**[Insert Abbreviated Month and Year of Publication in the
Federal Register]**)

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8. Amend section 52.225-5 by revising the date of the clause to read as set forth below; and in paragraph (a) removing from paragraph (1) of the definition "Designated country" the word "Aruba," and adding the words "Armenia, Aruba," in its place.

52.225-5 Trade Agreements.

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TRADE AGREEMENTS **[Insert Abbreviated Month and Year of
Publication in the Federal Register]**

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9. Amend section 52.225-7 by revising the date of the provision, and the second sentence of paragraph (b) to read as follows:

**52.225-7 Waiver of Buy American Act for Civil Aircraft and
Related Articles.**

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WAIVER OF BUY AMERICAN ACT FOR CIVIL AIRCRAFT AND RELATED ARTICLES
(**[INSERT ABBREVIATED MONTH AND YEAR OF PUBLICATION IN THE FEDERAL
REGISTER]**)

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(b) * * * Those countries are Albania, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Egypt, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Macao China, Malta, the Netherlands, Norway,

Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, Taiwan (Chinese Taipei), and the United Kingdom.

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10. Amend section 52.225-11 by revising the date of the clause to read as set forth below; and in paragraph (a) removing from paragraph (1) of the definition "Designated country" the word "Aruba," and adding the words "Armenia, Aruba," in its place.

52.225-11 Buy American Act—Construction Materials under Trade Agreements.

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BUY AMERICAN ACT—CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS [Insert Abbreviated Month and Year of Publication in the Federal Register]

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11. Amend section 52.225-23 by revising the date of the clause to read as set forth below; and in paragraph (a) removing from paragraph (1) of the definition "Designated country" and paragraph (1) of the definition "Recovery Act designated country" the word "(Aruba," and adding the words "(Armenia, Aruba," in its place.

52.225-23 Required Use of American Iron, Steel, and
Manufactured Goods—Buy American Act—Construction Materials
Under Trade Agreements.

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REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED
GOODS—BUY AMERICAN ACT—CONSTRUCTION MATERIALS UNDER TRADE
AGREEMENTS [Insert Abbreviated Month and Year of Publication
in the Federal Register]

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[BILLING CODE 6820-EP]

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